

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

EDWIN BOYER,

Plaintiff

v.

JEFFREY BEARD, et al.,

Defendants

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CIVIL NO. 3:CV-06-0432

(Judge Kosik)

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Plaintiff Edwin Boyer commenced this civil rights action pursuant to 42 U.S.C. § 1983 on February 28, 2006. At the time, he was incarcerated at the State Correctional Institution at Camp Hill, Pennsylvania. In March of 2007, he was released from state custody and provided the court with a Lancaster, Pennsylvania address. This case is procedurally at the stage where discovery was scheduled to conclude on October 4, 2007. Defendants received permission to depose Plaintiff in an Order issued on March 27, 2007. (Doc. 43.) The time within which to conclude discovery and conduct the deposition was thereafter extended. (Doc. 46.) On September 26, 2007, Defendants filed a motion for sanctions based upon Plaintiff's failure to appear for his deposition, despite being served with notice at his last known address by regular mail. Service was also attempted by certified mail, but the return

receipt was returned to the court unclaimed. (Doc. 47.) In the motion for sanctions, Defendants seek dismissal of this action with prejudice based upon Plaintiff's failure to appear.

On October 1, 2007, an Order was issued directing Plaintiff to respond to Defendants' motion within ten (10) days. (Doc. 50.) He was warned that his failure to do so would be construed by the court as his desire to no longer pursue this matter and to have abandoned the lawsuit. He was warned that his failure to prosecute and comply with the court's order would result in the dismissal of his action pursuant to Fed. R. Civ. P. 41(b). There is no indication that Plaintiff did not receive the court's order. Accordingly, the action will be dismissed for failure to prosecute.

NOW, THIS 23rd DAY OF OCTOBER, 2007, IT IS HEREBY ORDERED
THAT:

1. Defendants' Motion for Sanctions (Doc. 47) is **granted** to the extent that this action will be dismissed for failure to prosecute.
2. This action is **dismissed, with prejudice**, pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute and failure to comply with a court order.
3. The Clerk of Court is directed to **close this case**.
4. Any appeal from this Order will be deemed frivolous, without probable cause and not taken in good faith.

s/EDWIN M. KOSIK
United States District Judge